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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1929

No. 347

EDWARD ELIASON AND ELIN ELIASON,
APPELLANTS,

vs.

CHARLES WILBORN, CARRIE WILBORN, AND
NOEL STATE BANK

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS

FILED AUGUST 28, 1929

(34,478)

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[fol. 4] **IN CIRCUIT COURT OF COOK COUNTY**

In Chancery

Case No. 11946. L. R.

In the Matter of the Application of EDWARD J. HALEY and MARY A. HALEY to Register Title to Real Estate

Petition of EDWARD ELIASON and ELIN ELIASON, His Wife, for Cancellation of Certain Certificates and Memorials

PETITION—Filed July 30, 1926

To the Honorable the Judges of said Court:

Your petitioners, Edward Eliason and Elin Eliason, his wife, respectfully represent unto your Honors that under and by virtue of a decree of this court made and entered in the above entitled cause on the 6th day of August, A. D. 1921, the following described real estate, situate in the County of Cook and State of Illinois, viz:

Lot Nine (9) in Haley & Sullivan's Longwood Manor, being a subdivision of Block Eight (8) and the North half of Block Nine (9) in Hilliard & Dobbins Resubdivision of Blocks One (1) and Two (2) of the First Addition to Washington Heights lying North of Railroad in the East half of the Northwest quarter of Section Eight (8) Township Thirty-seven (37) North, Range Fourteen (14) East of the Third Principal Meridian,

was duly registered in the office of the Registrar of Titles in and for said County in the names of Edward J. Haley and Mary A. Haley, his wife, as joint tenants and not as tenants in common and a certificate of title was duly issued to them therefor; that by mesne and sundry conveyances and transfers the title to said premises has passed and become vested in your petitioners, Edward Eliason and Elin [fol. 5] Eliason, his wife, as joint tenants and not as tenants in common and that a certificate, numbered 113,893, registering the title to said premises in your petitioners was

duly issued out of the office of the Registrar of Titles in and for said County on September 21, 1923 and duly entered in register volume 197, at page 308.

Your petitioners further show that on the first day of April, A. D. 1926, they entered into a certain contract of sale or articles of agreement for warranty deed, whereby they agreed to sell and convey to George B. Kennedy and Pearl A. Kennedy, his wife, as joint tenants and not as tenants in common, the above described premises; that said contract of sale or articles of agreement for warranty deed was duly exectued by the parties thereto, as will appear by the original thereof, ready to be produced in open court, a true copy of which is hereto attached and marked Exhibit A, and made a part hereof.

Your petitioners further represent that the purchasers under said contract, shortly after the execution of the same, went into possession of the premises above described and are still in possession of the same and have, up to the happening of the events hereinafter set forth, made to your petitioners all payments required in and by said contract and the terms thereof to be made.

Your petitioners further show that in the month of May, 1926, they entered into certain negotiations with one Jerome C. Napletone doing business as Bankers Discount Co., for the sale to the said Napletone of the premises hereinabove set forth, subject to the rights of the said purchasers under said contract and also subject to a certain first mortgage in the amount of Twenty-seven Hundred Dollars ($2,700.00), which sale, when consummated, was to be effected by the conveyance of said premises by warranty deed from your [fol. 6] petitioners to the said Napletone and by the assignment to said Napletone by your petitioners of their interest in said contract of purchase; that in the course of the negotiations looking toward such sale, your petitioners entrusted to the said Napletone a duplicate original of said contract of sale and also the Certificate No. 113893 evidencing the title of your petitioners in and to said premises.

Your petitioners further show that thereafter, from about May 18, 1926 until June 18, 1926, your petitioners were constantly endeavoring to obtain from said Napletone either the amount which he had agreed to pay for said premises and said assignment of contract, or to obtain back from him the said Certificate of Title and duplicate original

contract which had been entrusted to him, but without avail; that on said June 19, 1926, your petitioners found the office before that time occupied by the said Napletone closed and were informed from other sources that the said Napletone had defrauded various people in the City of Chicago and had fled from said City of Chicago and State of Illinois.

Your petitioners further show that immediately thereafter they went to the office of Joseph F. Haas, Registrar of Titles in Cook County and then for the first time learned that the said Jerome C. Napletone had on May 19, 1926, deposited with the said Registrar of Titles the said Certificate No. 113,893 together with a pretended warranty deed from your petitioners to himself of the above described premises, which deed purported to be dated May 18, 1926, to have been acknowledged on May 18, 1926 before one John Boyle, a Notary Public in and for Cook County, Illinois, and to have been filed for record in the office of said Registrar of Titles on May 19, 1926 as Document No. 303,637 in Book 231 at page 447; that a certificate of title showing title to the above premises in the said Jerome C. Napletone, subject only to the above mentioned mortgage of Twenty-seven [fol. 7] Hundred Dollars ($2,700.00) was duly issued by said Registrar of Titles on May 19, 1926 as Certificate No. 167,919.

Your petitioners further show that said warranty deed last above referred to, purporting to be signed by your petitioners, was and is in all respects a forgery and the purported signatures of your petitioners thereto were and are in each instance forgeries and that your petitioners never knew of said deed until long after the same had been executed; that your petitioners have interviewed the said John Boyle, who as a Notary Public took the acknowledgement of the purported signers of said alleged deed and that the said John Boyle has stated to your petitioners that he never saw your petitioners or either of them before said last named interview and that the persons who acknowledged the execution of said deed before him and were introduced to him under the names of your petitioners, were not your petitioners or either of your petitioners but in fact different persons unknown to the said John Boyle.

Your petitioners further represent that thereafter a certain purported warranty deed from the said Jerome C.

Napletone to Charles Wilborn and Carrie S. Wilborn, his wife, dated May 24, 1926 and purporting to have been acknowledged on said May 24, 1926 before Julie V. Bahr, a Notary Public, was duly filed for record on May 29, 1926 in the office of the Registrar of Titles of said Cook County, Illinois and duly recorded in Book 339 at page 460 as Document No. 305,058; that your petitioners are not informed as to whether said last named warranty deed was the actual deed of the said Jerome C. Napleton and bore his genuine signature, but your petitioners show the fact to be that even if the signature thereto was genuine said deed was in [fol. 8] fact a nullity and ineffectual to convey any interest or title to the premises hereinabove described by reason of the fact that the grantor therein had not at that time and never had any title to said premises.

Your petitioners further show that at the time they learned of the recording of said two deeds, no certificate had as yet been issued by said Registrar of Titles to the said Charles Wilborn and Carrie S. Wilborn and that your petitioners promptly upon learning of the facts just hereinabove stated in reference to said deeds, protested to said Registrar of Titles against the issuing of such Certificate and notified said Registrar of Titles of the forgery of said deed from your petitioners to the said Napleton, but the said Registrar of Titles nevertheless on May 29, 1926 issued his certain Certificate of Title to the said Charles Wilborn and Carrie S. Wilborn, his wife, being Certificate No. 175,048.

Your petitioners further show that at the time of the execution and delivery of the said purported warranty deed from said Jerome C. Napletone to the said Charles Wilborn and Carrie S. Wilborn, his wife, the said Jerome C. Napletone also delivered to the said Wilborns the duplicate original of said contract of sale, a copy of which is hereto attached as Exhibit A and also delivered to the said Wilborns two purported and pretended assignments of the vendor's interest in said contract; that the first of said alleged assignments (a true copy of which is hereto attached marked Exhibit B and made a part hereof) purported to have been signed by your petitioners under date of May 18, 1926 and to have been duly acknowledged on said last named date before the said John Boyle, Notary

[fol. 9] Public; that the pretended signatures of your petitioners to said assignment were and each of them was and is forged and not the genuine or true signatures of your petitioners or either of them and that your petitioners never knew until after the events hereinabove set forth of the pretended execution and delivery of said alleged assignment and that the said John Boyle, the Notary Public before whom said assignment purports to have been acknowledged has stated to your petitioners that the persons who acknowledged before him the said pretended assignment were the same persons who acknowledged the said pretended warranty deed from your petitioners to the said Jerome C. Napletone and that they were not your petitioners nor either of them.

Your petitioners further show that with the said last mentioned purported assignment there was also a certain other purported assignment of the vendor's interest in said contract of sale from the said Jerome C. Napletone to the said Wilborns, said pretended and purported assignment being in words and figures as follows:

"For value received I hereby sell, assign, transfer and set over unto Charles Wilborn and Carrie S. Wilborn, all my right, title and interest in and to the within contract and guarantee the performance thereof.

"Given under my hand and seal this 24th day of May, A. D. 1926.

"Jerome C. Napletone. (Seal.)"

Your petitioner further shows that the said copy of the contract of sale which was delivered by said Napletone to the said Wilborns is now held by Noel State Bank, a corporation, for purposes of collection, which Noel State Bank also holds in its possession the two purported assignments of said contract of sale.

Your petitioners further show that they have made application to Joseph F. Haas, the Registrar of Titles of Cook County, Illinois, requesting him to cancel and remove [fol. 10] from his records the entries showing the two deeds hereinabove described and set forth and that the certificates issued to the said Jerome C. Napletone to the said Charles Wilborn and Carrie S. Wilborn be by him ordered delivered up and cancelled and that a certificate be issued

to your petitioners correctly setting forth the title to said premises in your petitioner but that the said Registrar has refused so to do.

Forasmuch, therefore, as your petitioners are without remedy save in a court of equity and this proceeding, your petitioners pray:

(1) That this Court may decree the said two purported warranty deeds and the said purported assignments of contract hereinabove set forth and each of them be null, void and of no effect upon the title to said premises or the interest of your petitioners thereto.

(2) That the said Registrar of Titles may be ordered and directed by decree of this Court to cancel and annul said certificates Nos. 167,919 and 175,048 and each of them and that the same may be expunged and cancelled upon the records of said Registrar of Titles.

(3) That the said Charles Wilborn and Carrie S. Wilborn and the said Noel State Bank, a corporation, may be ordered and directed by this Honorable Court to deliver to your petitioners the original duplicate contract of sale of the above described premises or articles of agreement for warranty deed and to account to your petitioners for any sum or sums paid to them by the purchasers under said contract and that the two purported assignments of the vendors' interest in said contract may by this Honorable Court be held to be null and void and of no effect.

[fol. 11] (4) That this Court may enter an order and decree finding the title to the premises aforesaid now vested in your petitioners, Edward Eliason and Elin Eliason, his wife, as joint tenants, free and clear of all liens and encumbrances except such as appear upon the certificate numbered 113893, heretofore issued to your petitioners and subject only to said first mortgage for Twenty-seven Hundred Dollars ($2700.00) and the rights of the said George B. Kennedy and Pearl A. Kennedy, his wife, as purchasers under said contract of sale and parties in possession.

(5) And that your petitioners may have such other and further relief as to your Honors shall seem meet and to equity shall appertain.

May it please your honors to grant the writ of summons in chancery, directed to the Sheriff of said Cook County, commanding him that he summon Joseph F. Haas, Registrar of Titles of Cook County, Illinois, Jerome C. Napletone, Charles Wilborn, Carrie S. Wilborn, his wife and Noel State Bank, a corporation, to appear before the said Court on the 16 day of August, A. D. 1926, then and there to answer this petition, etc.

And your petitioners, as in duty bound will ever pray, etc.

Edward Eliason, Elin Eliason. McGilvray, Eames, Vaughan & Tilley, Solicitors for Petitioners.

[fol. 12] *Duly sworn to by Edward Eliason and Elin Eliason. Jurat omitted in printing.*

[fol. 13] EXHIBIT "B" TO PETITION

Assignment

For and in consideration of the sum of One Dollar ($1.00) and other good and valuable considerations, the receipt of which is hereby confessed and acknowledged, we Edward Eliason and Elin Eliason, husband and wife, transfer unto Jerome C. Napletone all our rights, title and interest in and to certain Articles of Agreement, and the real estate therein described, made on the 1st day of April, A. D. 1926 between ourselves (Edward Eliason and Elin Eliason, husband and wife) as parties of the first part, and George B. Kennedy and Pearl A. Kennedy wife as joint tenants, as parties of the second part, relating to Lot Nine (9) Block two (2) in Haley and Sullivans Longwood Manor, being a subdivision of Block Eight (8) and the north half of Block Nine (9) in Hilliard and Dobbins Resubdivision of Block One (1) and Two (2) of the First Addition to Washington Heights lying North of Rail Road in the East half of the North West Quarter of Section Eight (8) Township Thirty-Seven (37) North Range Fourteen (14) being known as 1329 W. 97th Street situated in the County of Cook and State of Illinois, and we Edward Eliason and Elin Eliason,

husband and wife, do also hereby release and waive all rights under and by virtue of the Homestead Exemption Laws of the State of Illinois.

Dated May 18th, A. D. 1926, Chicago, Illinois.

(Signed) Edward Eliason. (Seal.) (Signed) Elin Eliason. (Seal.)

Signed, Sealed and Delivered in the Presence of:

(Signed) Albert Kirsch. (L. S.) (Signed) John Boyle, C. B. (L. S.)

STATE OF ILLINOIS,
County of Cook, ss:

I, John Boyle, a Notary Public, in and for said County, in the State aforesaid, do hereby certify that Edward Eliason and Elin Eliason, his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed, sealed and [fol. 14] delivered the said Instrument as their free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal this 18 day of May, 1926.

John Boyle, C. B., Notary Public. My commission expires February 17, 1927. (Seal.)

EXHIBIT "A" TO PETITION

Articles of Agreement for Warranty Deed

(Triplicate)

Articles of Agreement, made this First day of April in the year of our Lord One Thousand Nine Hundred and Twenty Six (1926) Between Edward Eliason and Elin Eliason, his wife, party of the first part, and George B. Kennedy and Pearl A. Kennedy, his wife, as joint tenants party of the second part:

Witnesseth, That, if the party of the second part shall first make the payments and perform the covenants hereinafter mentioned on their part to be made and performed,

the said party of the first part hereby covenants and agrees to convey and assure to the said party of the second part, in fee simple, clear of all incumbrances whatever, by a good and sufficient Warranty Deed, the lot, piece, or parcel of ground, situated in the County of Cook and State of Illinois known and described as Lot Nine (9) in Block Two (2) in Haley & Sullivans Longwood Manor, being a Subdivision of Block eight (8) and the North half of Block Nine (9) in Hilliard and Dobbins Resubdivision of Block one (1) and Two (2) of the First Addition to Washington Heights, lying North or Rail Road in the East Half of the North West Quarter of Section Eight (8), Township Thirty-Seven (37) North, Range Fourteen (14) and the said party of the second part hereby convenants and agrees to pay to the said [fol. 15] party of the first part the sum of Six Thousand Seven Hundred Fifty 00/100 Dollars in the manner following: One Thousand ($1,000.00) Dollars the receipt of which is hereby acknowledged, assuming First mortgage for the sum of $2,700.00 dated April 5th, 1926, due April 5th, 1931 with interest at rate of 6% per annum payable semi-annually, the balance Three Thousand & Fifty ($3,050.00) Dollars being payable at the rate of $60.00 or more per month commencing on the Eighth day of May, A. D. 1926 and on the Eighth day of each and every month thereafter. Said monthly payments including interest at the rate of six per cent per annum payable monthly on entire principal sum remaining from time to time unpaid. Said payment also including interest on First mortgage, or impositions that may be legally levied or imposed upon said land, subsequent to the year 1925. And in case of the failure of the said party of the second part to make either of the payments, or any part thereof, or perform any of the covenants on their part hereby made and entered into, this contract shall, at the option of the party of the first part, be forfeited and determined, and the party of the second part shall forfeit all payments made by them on this contract, and such payments shall be retained by the said party of the first part in full satisfaction and in liquidation of all damages by them sustained, and they shall have the right to re-enter and take possession of the premises aforesaid.

Party of first part shall deliver to party of second part a Warranty Deed when said party of second part has paid

the principal sum of $4,050.00/100) also Torrens Certificate. [fol. 16] It is mutually agreed by and between the parties hereto, that the time of payment shall be of the essence of this contract; and that the covenants and agreements herein contained shall extend to and be obligatory upon the heirs, executors, administrators and assigns of the respective parties.

In witness whereof the parties to these Presents have hereunto set their hands and seals, the day and year first above written.

Edward Eliason. (Seal.) Elin Eliason. (Seal.) George B. Kennedy. (Seal.) Pearl A. Kennedy. (Seal.)

Sealed and Delivered in Presence of Raymond H. Broble, William J. Burkley.

[fol. 17] In Circuit Court of Cook County

[Title omitted]

Demurrer of Charles Wilborn and Carrie S. Wilborn—Filed Sept. 1, 1926

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the said petition contained to be true, in such manner and form as the same are therein and thereby set forth and alleged demur to said petition, and for cause of demur show that the petitioners have not in and by their said petition made or stated such a case as entitles them in a court of equity to any discovery or relief from or against these defendants touching the matters contained in the said petition, or any of such matters.

Wherefore, and for divers other good causes of demurrer appearing in said bill of complaint, these defendants demur to the said petition, and to all the matters and things therein contained, and pray the judgment of this Honorable Court whether they shall be compelled to make any further or other answer to the said petition, and they pray to be dismissed with their reasonable costs in this half sustained.

[fol. 18] Charles Wilborn, Carrie S. Wilborn. Charles F. Glaeser, Joseph G. Sheldon, Solicitors for Defendants.

I hereby certify that I am one of the solicitors for the defendants named herein, and that in my opinion the demurrer is well founded in point of law.

Joseph G. Sheldon, Solicitor for Defendants.

STATE OF ILLINOIS,
County of Cook, ss:

Joseph G. Sheldon, being first duly sworn, on oath states that he is one of the solicitors for the defendants named herein, and that the above demurrer is interposed for delay, and in order that justice may be done.

Joseph G. Sheldon.

Subscribed and sworn to before me this 31st day of August, A. D. 1926. L. M. Langley, Notary Public. (Seal.)

[fol. 19] IN CIRCUIT COURT OF COOK COUNTY

[Title omitted]

DEMURRER OF NOEL STATE BANK, A CORPORATION—Filed Sept. 1, 1926

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said petition contained to be true, in such manner and form as the same are therein and thereby set forth and alleged demurs to said petition, and for cause of demur shows that the petitioners have not in and by their said petition made or stated such a case as entitles them in a court of equity to any discovery or relief from or against this defendant touching the matters contained in the said petition, or any of such matters.

And for a further cause of demurrer this defendant shows:

1. That the relief prayed against this defendant in said [fol. 20] petition is not such a relief as the petitions are entitled to obtain in the matter of the application of Edward J. Haley and Mary A. Haley to register title to real estate;

2. That this defendant is not a proper or necessary party to a petition filed by the petitioners under said proceedings to compel the Registrar to cancel and remove the memorial of the transactions therein set forth;

3. That in said application to register title to real estate the petitioners are not entitled to any relief against this defendant in the form of an accounting as prayed in said petition, but that if the petitioners are entitled to any accounting from this defendant by reason of the allegations contained in said petition the remedy of the petitioners would be either the filing of a bill of complaint in a court of equity or the institution of a suit at law.

Wherefore, this defendant demurs to the said petition and to all the matters and things therein contained, and prays that the judgment of this Honorable Court whether he shall be compelled to make any further or other answer thereto and prays to be dismissed with his reasonable costs in this behalf sustained.

Noel State Bank. Charles F. Glaeser, Solicitor for Defendant.

I hereby certify that in my opinion the demurrer is well founded in point of law.

Charles F. Glaeser, Solicitor for Defendant.

[fols. 21 & 22] State of Illinois,
County of Cook, ss:

Charles F. Glaeser, being first duly sworn, on oath states that he is the solicitor for the above named defendant, and that the above demurrer is not interposed for delay, and in order that justice may be done.

Charles F. Glaeser.

Subscribed and sworn to before me this 31st day of August, A. D. 1926. Joseph G. Sheldon, Notary Public. (Seal.)

[fol. 23] IN CIRCUIT COURT OF COOK COUNTY

In Chancery

Case No. 11946. L. R.

In the Matter of the Application of EDWARD J. HALEY and MARY A. HALEY to Register Title to Real Estate

Petition of EDWARD ELIASON and ELIN ELIASON, his wife for Cancellation of Certain Certificates and Memorials

JUDGMENT—Oct. 22, 1926

This case coming on to be heard, upon the motion of Edward Eliason and Elin Eliason, his wife, petitioners, by McGilvray, Eames, Vaughan & Tilley, their solicitors, for leave to file instanter an amendment to their petition or bill of complaint herein, and it appearing to the court that the time heretofore granted by order of this court for filing such amendment has elapsed and that due notice of this motion has been given to the solicitors for all defendants who have appeared therein,

It is hereby ordered that said petitioners have leave to file instanter their sworn amendment to the petition or bill of complaint heretofore filed by them in this cause;

And said petitioners having filed said sworn amendment in open court, it is hereby ordered that the demurrers of the defendants, Charles Wilborn and Carrie S. Wilborn, [fol. 24] his wife, and Noel State Bank, a corporation, heretofore filed to the original petition or bill of complaint herein, stand as demurrers to said petition or bill of complaint as amended.

And now this cause coming on to be heard upon the petition or bill of complaint, as amended, of Edward Eliason and Elin Eliason, his wife, and upon the demurrer of the defendants, Charles Wilborn a. d Carrie S. Wilborn, his wife, to said petition as amended and upon the demurrer of Noel State Bank, a corporation, to said petition as amended, and the Court having heard arguments of counsel and being sufficiently advised in the premises,

It is hereby ordered that said demurrers and each of them to said petition or bill of complaint as amended, be and they are hereby sustained.

Whereupon, said petitioners, Edward Eliason and Elin Eliason, his wife, electing in open court to stand by their said petition or bill of complaint as amended,

It is hereby ordered that said petition or bill of complaint as amended be and the same is hereby dismissed at said petitioner's costs.

Whereupon, the said petitioners, Edward Eliason and Elin Eliason, his wife, pray an appeal from said order so sustaining said demurrers and dismissing said petition as amended, to the Supreme Court of the State of Illinois, which appeal is hereby allowed upon said petitioners' filing their appeal bond in accordance with the statute in the penal sum of three hundred dollars ($300.00) within 20 days from this date.

Enter.

Francis S. Wilson, Judge.

[fol. 25] In Circuit Court of Cook County

[Title omitted]

Amendment to Petition—Filed Oct. 22, 1926

Now come Edward Eliason and Elin Eliason, his wife, petitioners in the above entitled cause, and by leave of court first had and obtained, amend their certain petition or bill of complaint heretofore filed herein in the following respects, viz: By adding to and inserting in said petition or bill of complaint, after the last paragraph on page 6 thereof, and before the first paragraph on page 7 thereof, the following additional paragraph:

"Your petitioners further show that prior to the issuance by said Registrar of Titles of the said certificate of title to the said Charles Wilborn and Carrie S. Wilborn, his wife, being Certificate No. 175,048, the said defendants, Charles Wilborn and Carrie S. Wilborn, his wife, had ac-

[fols. 26-32] tual Notice and knowledge of the claim of your petitioners that the said warranty deed purporting to be signed by your petitioners and the said assignment of vendor's interest in the contract of sale, purporting to be signed by your petitioners, were in fact not signed, exe-

cuted or acknowledged by your petitioners and that each of them was in fact a forgery and of no effect in law."

Edward Eliason, Elin Eliason. McGilvray, Eames, Vaughan & Tilley, Solicitors for petitioners.

Duly sworn to by Edward Eliason and Elin Eliason. Jurat omitted in printing.

[fol. 33] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 34] In Supreme Court of Illinois, February Term, A. D. 1927

In the Matter of the Application of Edward J. Haley and Mary A. Haley to Register Title to Real Estate

Edward Eliason and Elin Eliason, Appellants,

vs.

Charles Wilborn, Carrie S. Wilborn, and Noel State Bank, a Corporation, Appellees

Appeal from Circuit Court Cook County, Honorable Francis S. Wilson, Judge

Assignment of Errors

Now come Edward Eliason and Elin Eliason, appellants and petitioners below and say that in the record of the proceedings in the above entitled cause and in the rendition of the judgment and decree in this cause there is manifest error in this, to-wit:

(1) The court erred in sustaining the demurrer of Charles Wilborn and Carrie S. Wilborn to the amended petition of Edward Sliason and Elin Eliason.

(2) The court erred in sustaining the general demurrer of Noel State Bank, a corporation, to the amended petition of Edward Eliason and Elin Eliason.

(3) The court erred in sustaining the special demurrer of Noel State Bank, a corporation, to the amended petition of Edward Eliason and Elin Eliason.

(4) The court erred in sustaining the general and special demurrer of Noel State Bank, a corporation, to the amended petition of Edward Eliason and Elin Eliason.

[fols. 35-37] (5) The court erred in not overruling the demurrer of Charles Wilborn and Carrie S. Wilborn to the amended petition of Edward Eliason and Elin Eliason.

(6) The court erred in not overruling the general and special demurrers of Noel State Bank, a corporation, to the amended petition of Edward Eliason and Elin Eliason.

(7) The court erred in dismissing the amended petition of Edward Eliason and Elin Eliason.

(8) The court erred in entering a decree or judgment for costs against petitioners, Edward Eliason and Elin Eliason.

(9) The order and decree of the court sustaining said demurrers dismissing said petition and entering judgment against the petitioners for costs was contrary to the law in the case.

by reason whereof, the said appellants, Edward Eliason and Elin Eliason, petitioners below, pray that said order and decree may be reversed and said cause remanded.

Edward Eliason and Elin Eliason, by McGilvray, Eames, Vaughan & Tilley, Their Attorneys and Solicitors.

[fols. 38-49] Minute entry of argument and submission February 15, 1927, omitted in printing.

[fols. 50 & 51] In Supreme Court of Illinois

[Title omitted]

Order Granting Rehearing—Dec. 7, 1928

And now on this day the Court having duly considered the petition for rehearing filed herein and the Court being

now advised in the premises doth allow the prayer for petition for rehearing of this cause.

[fols. 52-54] Minute entry of submission December 19, 1928, omitted in printing.

[fol. 55] In Supreme Court of Illinois

Docket No. 18143—Agenda 54—February, 1927

Edward Eliason et al., Appellants,

v.

Charles Wilborn et al., Appellees

Per Curiam:

An opinion in this cause was filed at a former term of this court. A petition for rehearing was filed and allowed. Upon further consideration the court adheres to the conclusions reached in that opinion and it is re-adopted and re-filed.

Opinion—Filed June 19, 1929

Mr. Commissioner Partlow reported this Opinion:

Appellants, Edward Eliason and Elin Eliason, his wife, filed their petition in the circuit court of Cook county under sections 93 and 94 of the Torrens act, against appellees, Charles Wilborn, Carrie S. Wilborn and the Noel State Bank, also Joseph F. Haas, as registrar of titles of Cook county, and Jerome C. Napletone, to cancel two certificates of title and for other relief. A demurrer was sustained to the petition as amended, it was dismissed for want of equity, and an appeal has been prosecuted to this court.

The petition sets out the following facts: On August 6, 1921, the title to the real estate was registered in Edward J. Haley and Mary A. Haley, his wife, and a certificate of title was issued to them. By mesne conveyances the title became vested in appellants and a certificate registering the

title in them was issued by the registrar on September 21, 1923. On April 1, 1926, they entered into a written contract to sell the real estate to George B. and Pearl A. Kennedy, and the purchasers went into possession, have remained in possession since that time and have made all payments as provided in the contract. In May, 1926, appellants entered into negotiations with Jerome C. Napletone to sell the premises to him, subject to a mortgage for $2,700, and the contract of sale was to be assigned by them to Npletone. Appellants delivered to Napletone the contract of sale and their certificate of title to the premises. From May 18, 1926, until June 18, 1926, appellants constantly endeavored to obtain from Napletone either the amount which he was to pay for the premises, or to obtain from him the certificate of title and the contract of sale, but they were unable to get any settlement out of him. On June 19, 1926, they found the office of Napletone closed and were informed that he had defrauded various people in Chicago and had fled from the State. They then went to the office of the registrar of titles of Cook county and learned that Napletone on May 19, 1926, had deposited with the registrar the certificate of title of appellants, together with a pretended warranty deed from them to Napletone dated May 18, 1926, acknowledged before John Boyle, a notary public of Cook county, and filed on May 19, 1926, [fol. 56] and on the same day, upon application of Napletone, a certificate showing title in him, subject to the mortgage of $2,700, was issued by the registrar. The warranty deed purporting to be signed by appellants and conveying title to Napletone was a forgery. Appellants interviewed Boyle, who took the acknowledgment, and Boyle stated that he never before had seen appellants or either of them; that the persons who acknowledged the deed were introduced to him under the names of appellants; that they were not appellants but were persons unknown to Boyle. A warranty deed from Napletone to Charles Wilborn and Carrie Wilborn, his wife, dated May 24, 1926, acknowledged before Julie V. Bahr, a notary public, was filed for record on May 29, 1926. Appellants alleged that they are not informed whether this deed was the actual deed of Napletone and bore his genuine signature, but even if the signature thereto was genuine the deed was a nullity and ineffective to convey title because the grantor therein had no title. At the

time appellants learned of the recording of these two deeds no certificate had been issued by the registrar to the Wilborns but application had been made therefor. Appellants protested to the registrar against issuing such a certificate and notified him of the forgery of the deed from appellants to Napletone, but the registrar on May 29, 1926, issued a certificate to the Wilborns. At the time of the execution of the purported deed from Napletone to the Wilborns, Napletone delivered to the Wilborns the contract of sale, together with a purported assignment thereof to him from appellants dated May 18, 1926, and acknowledged before Boyle as a notary public. The signatures of appellants to this assignment were forged. Boyle stated to appellants that the persons who acknowledged the assignment were the same persons who acknowledged the pretended deed from appellants to Napletone and that they were not appellants. Napletone also delivered to the Wilborns an assignment of the contract of sale from him to the Wilborns. The contract of sale is now held by the Noel State Bank for collection, together with the two purported assignments thereof. Appellants made application to the registrar to cancel the record of the two deeds, the certificate issued to Napletone, the certificate issued to the Wilborns, and asked that a certificate be issued to appellants showing title in them, but the registrar refused so to do.

A demurrer was filed to the petition, whereupon appellants filed an amendment, in which they alleged that prior [fol. 57] to the issuance of the certificate to the Wilborns the Wilborns had actual notice and knowledge of the claim of appellants that the warranty deed purporting to be signed by them, and the assignment of the contract of sale purporting to be signed by them, were in fact not executed or acknowledged by them, and that each of them was a forgery and of no effect in law.

The prayer of the petition was that the two purported warranty deeds and the assignments of the contract be declared null and void; that the registrar be ordered to cancel and annul the certificates issued to Napletone and the Wilborns; that the Wilborns and the Noel State Bank be ordered to deliver to appellants the contract of sale, to account to appellants for any money paid by the purchasers under the contract, and that the assignments of the contract be held to be null and void; that the title be vested

in appellants free of all liens and encumbrances except such as appear upon the certificate issued to them, subject to the mortgage of $2,700 and subject to the rights of the Kennedys under their contract of sale. After the petition was amended another demurrer was filed, which was sustained, a decree was entered dismissing the petition for want of equity, and this appeal followed.

It is contended by appellants that a grantee in a forged deed takes no title; that sections 40 and 42 of the Torrens act do not by their terms include registered titles based upon forged deeds; that fraud and forgery, within the meaning of the law, are two separate and distinct things; that inasmuch as the act makes no reference or provision as to the effect of forgery upon the title of registered owners, the general principle of law prevails that no valid title can be based upon a forged deed, and that if these sections are otherwise construed they are unconstitutional.

The last part of section 40 of the Torrens act provides: "The registered owner of any estate or interest in land brought under this act shall, except in cases of fraud to which he is a party, or of the person through whom he claims without valuable consideration paid in good faith, hold the same subject to the charges hereinabove set forth and also only to such estate, mortgages, liens, charges and interests as may be noted in the last certificate of title in the registrar's office and free from all others except: (1) Any subsisting lease or agreement for a lease for a period of not exceeding five years, where there is actual occupation of the land under the lease. The term lease shall in- [fol. 58] clude a verbal letting. (2) General taxes for the calendar year in which the certificate of title is issued, and special taxes or assessments which have not been confirmed. (3) Such right of appeal, writ of error, right to appear and contest the application, and action to make counter-claim as is allowed by this act." Section 42 is as follows: "Except in case of fraud and except as herein otherwise provided, no person taking a transfer of registered land, or any estate or interest therein, or of any charge upon the same from the registered owner shall be held to inquire into the circumstances under which, or the consideration for which such owner or any previous registered owner was registered, or be affected with notice, actual or constructive, of any unregistered trust, lien, claim, demand

or interest; and the knowledge that any unregistered lien, claim, demand or interest is in existence shall not of itself be imputed as fraud."

Fraud is the only exception mentioned in the statute where the certificate does not carry with it a good title. In cases of fraud the title is good in the hands of a bona fide purchaser for value. If forgery is not a species of fraud, as contended by appellants, then the statute by its terms makes the certificate the basis of a good title even in cases of forgery. Appellants in their brief say that "undoubtedly forgery is a species of fraud, yet the term 'fraud' is used constantly in statutory enactments and in opinions by the courts of this State as a basis for decisions which would be impossible if the documents in question were forgeries." While it is true there is a distinction between fraud and forgery, and forgery contains some elements that are not included in fraud, yet all forgeries are a species of fraud. The Century Dictionary defines fraud as "an act or course of deception deliberately practiced with the view of gaining a wrong or unfair advantage; deceit; trick; and artifice by which the right or interest of another is injured." In Story's Equity Jurisprudence (vol. 1, secs. 186, 187,) it is stated that fraud, in its general sense, comprises all acts, omissions and concealments involving a breach of legal or equitable duty, trust or confidence and resulting in damage to another. This definition is approved in Diversey v. Johnson, 93 Ill. 547, and 26 Corpus Juris, 1059. Bouvier's Law Dictionary (vol. 1, p. 843,) states that active and positive fraud includes cases of the intentional and successful employment of any cunning, deception or artifice to circumvent, cheat or deceive another. Forgery is the fraudulent making or altering of a writing with the intent to prejudice [fol. 59] the rights of another. (People v. Meyer, 289 Ill. 184.) Every forgery includes acts and courses of deception deliberately practiced with a view of gaining a wrong or unfair advantage. It includes deceit, trick or artifice used to circumvent, cheat or deceive another. A fraud may be perpetrated by means of a forgery as well as by any other form of deception. The term "fraud," as used in the statute, is not limited to any particular kind of fraud but covers fraud of every kind and description, and therefore includes forgery. The petition did not allege that the Wilborns were

not purchasers for value, nor did it allege that they had notice of the forgeries prior to the date of their deeds from Napletone. In these respects the petition was defective and was subject to demurrer. It did allege that the Wilborns had notice of the forgery prior to the time the title was registered in them, but this allegation was not sufficient to entitle appellants to relief. Napletone did not take a good title under his certificate because he was a party to the forgery, but if the Wilborns were purchasers for value in good faith they were not required to inquire prior to the date of the certificate to Napletone, and they took a good title unless the statute is unconstitutional.

Appellants insist that if this construction is placed upon the statute it is unconstitutional, for the reason that it is in violation of section 2 of article 2 of the State constitution and the fifth amendment to the Federal constitution, which provide that no person shall be deprived of life, liberty or property without due process of law. The principal grounds for claiming that the statute is unconstitutional are, that there is no provision in it for notice to appellants so they could have the opportunity to appear and defend their title, and that because no opportunity was given them to defend they were deprived of their property without due process of law.

In determining whether the statute is unconstitutional its various provisions must be considered as a whole. The act is optional in the various counties of the State. It is not compulsory in any county and can only become operative by a vote of the people, as provided in section 110. After it has been adopted by a county it is not compulsory as to any person owning land in the county. No one is required to register his land unless he sees fit to do so. When an owner brings his land under the act he presumptively does so with notice of all of its provisions and requirements, including its rights, privileges and obligations. [fol. 60] When he does voluntarily submit his land to the operation of the act he has no cause to complain that the act is unconstitutional. (Victor Chemical Works v. Industrial Board, 274 Ill. 11; Dietz v. Big Muddy Coal Co., 263 id. 480; Crooks v. Tazewell Coal Co., 263 id. 343; Deibeikis v. Link-Belt Co., 261 id. 454.) Under section 46, when land is registered there is an implied agreement, which runs with the

land, that the same shall be subject to the terms of the act and to all amendments and alterations thereto. Upon the original application to register, the statute requires that all persons interested or in possession shall be made parties defendant; that there shall be personal service or service by publication on all defendants; that there shall be a full and complete hearing, with ample opportunity to all parties to present and preserve their rights. Section 36 provides for the preservation with the registrar of the original certificate of title issued and the delivery of a duplicate certificate to the applicant. Section 37 provides for the preservation of the evidence of the handwriting of the holder of the duplicate certificate, and that his receipt therefor, in his handwriting, shall be prima facie evidence of the genuineness of his signature. After the hearing, if a certificate is granted, the effect of such certificate is specified in sections 40 and 42 above noted.

The land in this case was first registered in the names of the Haleys and a certificate was issued to them. When appellants bought it they knew the title had been registered, and they took it subject to all of the rights, privileges and obligations of such registration and the law applicable thereto. They were under no obligations to buy, but when they did buy and registered their title they came under all of the provisions of the act and were presumed to know all of its terms. The title was registered in appellants under section 47, which provides that when a registered owner desires to sell his land he may transfer it by deed, and upon filing the deed in the registrar's office and surrendering to the registrar the duplicate certificate of title, and upon its being made to appear to the registrar that the transferor has the title proposed to be transferred, he shall issue and register a new certificate in the name of the applicant. After the title was registered in appellants it could not be registered in Napletone until the duplicate certificate to appellants was surrendered to the registrar. If section 47 had been complied with it would have been impossible for Napletone to have accomplished this fraud. The act erected a [fol. 61] safeguard against a forged transfer being registered, by the requirement that no transfer should be registered unless the owner's certificate was produced along with the instrument of transfer. Section 101 provides that any

person wrongfully deprived of any land through the bringing of the same under the provisions of the act or by the registration of any other person as owner of such land, the person who is barred or who in any way is precluded from bringing an action for the recovery of such land shall have a right of action for damages against the county and may file a claim with the county board or bring an action at law for the recovery of such damages. In Board of Education v. Blodgett, 155 Ill. 441, it was held that the deprivation of a remedy is equivalent to a deprivation of the right which it is intended to vindicate, unless another remedy exists or is substituted for that which is taken away.

Many States and foreign countries have statutes similar to ours which have been in force for many years. Appellees cite cases from Australia, New Zealand and Canada where it has been held that the registration of a title based upon a forged deed is not good in favor of a party to the forgery but is good in favor of a bona fide purchaser for value. (Anderson v. Davy, 1 N. Z. L. 302; Whakaruru v. Public Trustee, 12 id. 651; Fawkes v. Attorney General, 6 Ont. L. 490.) In Thom on Canadian Torrens System it is said (p. 192): "It has never been disputed, however, that while a certificate of title issued on forgery may not be good in favor of the owner through the forgery even though bona fide and for value, the real person holding such certificate of title may transfer a good title to a third person." In Hogg on Registration of Title to Land Through the Empire it is said (p. 142): "Forgery, of course, necessarily implies fraud. Cases of forgery, however, strongly illustrate the conclusive effect of registration of a bona fide purchaser for value from a vendor whose registration has been procured by fraud. Such a purchaser's title may be upheld even where his vendor (the previous registered owner) has been registered by means of his own forgery—that is, has been himself the forger and not merely the victim of another person's forgery." Niblack, in his Analysis of the Torrens Systems, at page 201 says: "Unless otherwise provided in a Torrens act, the rule in case of forgery may be stated as follows: The registration of a forger, or of a person in good faith and for value as the result of a forgery, or of a person claiming under [fols. 62 & 63] either of them without a valuable considera-

tion paid in good faith, may be set aside, but the registration of a person for value in good faith, claiming under any one of these, will hold the title as against the former registered owner who is the victim of the forgery, and all claiming under him. A forged transfer or mortgage will become the root of a valid title." The author of this work was a member of the Chicago bar and the work relates primarily to the Illinois act.

Section 34 of the California statute, passed in 1897, is similar to the first part of section 40 of our statute above quoted. Section 36 of the California statute is identical with section 42 of our statute. Section 37 provides that in case of fraud the registration shall not be good in favor of the persons who perpetrated the fraud but is good as to subsequent purchasers for value in good faith. Section 38 makes the same provision as to forgery that section 37 makes as to fraud. Several States have provisions similar or identical with sections 40 and 42. Most of these statutes have been in force for many years, and no case is cited where any of them have been held to be unconstitutional on the grounds here urged by appellants.

Forgery is included in the term "fraud" as used in the statute. The statute is not unconstitutional because it deprived appellants of the title to their property without due process of law. It makes ample provision for the protection of all persons interested. Appellants lost their property by reason of their failure to safeguard their interests and not by reason of any defect in the statute.

The demurrer to the petition was properly sustained, and the decree will be affirmed.

Per CURIAM:

The foregoing opinion reported by Mr. Commissioner Partlow is hereby adopted as the opinion of the court, and judgment is entered in accordance therewith.

Decree affirmed.

Mr. Justice Heard, dissenting.

[fol. 64] IN SUPREME COURT OF ILLINOIS

No. 18143

EDWARD ELIASON and ELIN ELIASON, Appellants,

vs.

CHARLES WILBORN, CARRIE S. WILBORN, and NOEL STATE BANK, a Corporation, Appellees

JUDGMENT—June 19, 1929

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as the matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the Decree aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error;

Therefore, it is considered by the Court that the Decree of the Circuit Court aforesaid, be affirmed in all things and stand in full force and effect, notwithstanding the said matter and things therein assigned for error. And it is further considered by the Court that the said Appellees recover of and from the said Appellants costs by them in this behalf expended, to be taxed, and that they have execution therefor.

I, Charles W. Vail, Clerk of the Supreme Court of the State of Illinois and keeper of records, files and seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In testimony whereof I have set my hand and affixed the seal of the said Supreme Court, at Springfield, in said State, this 14th day of August, in the year of our Lord one thousand nine hundred and twenty-nine.

Chas. W. Vail, Clerk of the Supreme Court. (Seal of the Supreme Court. State of Illinois, Aug. 26, 1818).

[fols. 65 & 66] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 67] IN SUPREME COURT OF ILLINOIS

[Title omitted]

PETITION FOR APPEAL AND ORDER ALLOWING SAME—Filed Aug. 13, 1929

Considering themselves aggrieved by the final decision and judgment of the Supreme Court of the State of Illinois in the above entitled cause, which such judgment was rendered by that Court on June 19, 1929, the Appellants therein, Edward Eliason and Elin Eliason, hereby pray that they be allowed an appeal herein from the said decision and judgment of the Supreme Court of Illinois to the Supreme Court of the United States, and for an order fixing the amount of the bond thereon, in order that they may bring up for review before the Supreme Court of the United States the said decision and judgment of the Supreme Court of Illinois.

Appellants accompany this petition with an assignment of errors and prayer for reversal, in accordance with the Revised Rules of the Supreme Court of the United States, effective July 1, 1928.

This case is one in which, under legislation in force when the Act of January 31, 1928, was passed by the Congress [fol. 68] of the United States, a review could be had in the Supreme Court of the United States on writ of error under Section 237 of the Judicial Code. The case is one in which there is drawn in question the validity of a statute of Illinois on the ground of its being repugnant to the Constitution of the United States, and the decision of the State Supreme Court was in favor of the validity of this statute.

On January 12, 1927, Appellants filed in the Circuit Court of Cook County, Illinois, under and pursuant to the provisions of Sections 93 and 94 of "An Act concerning land titles", commonly known as the Torrens System of land registration, (Cahill's Ill. Rev. Stats., Chap. 30, Pars. 49 to 153) their petition in equity to cancel two certificates of

title covering lands owned by Appellants which had been issued by the Registrar of Titles, the first certificate being based on a forged deed purporting to have been made by Appellants to one Jerome C. Napletone, and the other upon a deed from said Napletone to Appellees, the Wilborns, under which deed the Wilborns claim title.

As shown by said petition, title to the real estate was originally registered under said Act in Edward J. Haley and wife on August 6, 1921. By mesne conveyances the title subsequently became vested in Appellants and a certificate of title in them was issued by the Registrar under said Act on September 21, 1923. In May, 1926, Napletone, upon fraudulently obtaining possession of Appellants' certificate of title, forged Appellants' signatures to a deed from Appellants to himself, which deed he filed with the Registrar and obtained thereon a certificate of title in himself. A few days thereafter Napletone conveyed the land to Appellees, Wilborns, who bought without notice of the [fol. 69] forgery, and who, thereafter, and after notice of the forgery, filed their deed with the Registrar and obtained from him a new certificate of title, based on the deed from Napletone to them, Napletone's title being based on the forged deed purporting to have been made by Appellants. It is these two last mentioned certificates of title which Appellants sought to have cancelled and removed as clouds on their title.

A demurrer was sustained to the petition and it was dismissed and judgment for costs entered in the trial court against Appellants in favor of Appellees, from which judgment Appellants took an appeal to the Supreme Court of Illinois, that being the highest court in that State in which a final decision in the case could be had.

The Supreme Court of Illinois by an opinion handed down October 25, 1928, (October Term) affirmed the judgment of the Circuit Court and rendered judgment for costs against Appellants.

Appellants thereupon filed a petition for rehearing, which was allowed, and the cause was reconsidered by the Supreme Court at the June Term, 1929, at which term, on June 19, 1929, that Court adhered to the conclusions reached in its former opinion and readopted and refiled its former

opinion, which opinion was written and reported by Mr. Commissioner Partlow.

The two controlling questions presented and argued on the appeal before the Supreme Court of Illinois, both of which were considered and decided by that Court, were:

First. Whether or not the statute (Secs. 40 and 42 of the Torrens Act) includes by its terms registered titles based on forged deeds, that is, whether the statute makes a certificate of title issued by the Registrar and based on a forged [fol. 70] deed conclusive evidence of title in favor of a purchaser without notice. The Supreme Court decided that it did and so construed the statute.

Second. Whether or not, as so construed, the statute violates due process of law and is repugnant to the Fourteenth Amendment to the Constitution of the United States.

The Supreme Court of Illinois sustained the validity of the statute as construed by that Court, and held that it is not repugnant to the Constitution of the United States and did not deprive Appellants of their property without due process of law. This is the only ground upon which the judgment of that Court, in affirming the judgment of the trial court, can rest.

The Federal question involved was duly presented and raised by Appellants in the Supreme Court of Illinois. The question was argued in the briefs of counsel and in Appellants' petition for rehearing, which petition was granted and the cause reconsidered thereon by the Court, and the Court in its opinion considered and decided the question.

Wherefore petitioners pray that an appeal may be al- [fols. 71 & 72] lowed herein from the said decision and judgment of the Supreme Court of Illinois, and that petitioners may have such other and further relief in the premises as may be just.

Edward Eliason, Elin Eliason, by Matthias Concannon, Their Attorney. Matthias Concannon, Counsel for Appellants, 69 W. Washington St., Chicago, Illinois.

Read on application for appeal August 12", 1929. Appeal allowed as prayed to the Supreme Court of the United States upon filing appeal bond in the sum of $1,000.00. Citation returnable September 12, 1929.

William M. Farmer, Chief Justice of the Supreme Court of Illinois.

[File endorsement omitted.]

[fol. 73] IN SUPREME COURT OF ILLINOIS

[Title omitted]

ASSIGNMENT OF ERRORS—Filed Aug. 13, 1929

And now come Edward Eliason and Elin Eliason, Appellants, and assign the following errors in the record and proceedings in the said cause:

1. The Supreme Court of the State of Illinois erred in holding that Sections 40, 42 and 46 of the statute of the State of Illinois, entitled, "An Act concerning land titles," approved and in force May 1, 1897, as amended, (Laws 1897, p. 141; Cahill's Ill. Rev. Stats. 1927, Chap. 30, pars. 88, 90 and 94), as construed and applied to appellants by that Court in this case were valid and not in contravention of the Constitution of the United States.

2. The Supreme Court of the State of Illinois erred in holding that the said statute of the State of Illinois, as construed and applied to appellants by said Court in this case, did not deprive the Appellants of their property without [fol. 74] due process of law and did not deny to appellants the equal protection of the laws contrary to the Fourteenth Amendment to the Constitution of the United States.

3. The Supreme Court of the State of Illinois erred in holding that Appellants, by voluntarily purchasing lands registered under the said statute of Illinois, cannot complain that any of the provisions of said statute operate to deprive them of their property without due process of law or to deny to them the equal protection of the laws contrary to

the provisions of the Fourteenth Amendment to the Constitution of the United States.

4. The Circuit Court of Cook County, Illinois, erred in holding that the certificate of title issued by the Registrar of Titles of Cook County, Illinois, to Jerome C. Napletone, based on a forged deed purporting to have been made by Appellants to said Napletone, as grantee, and the certificate of title issued by said Registrar to Charles Wilborn and Carrie S. Wilborn, Appellees, were conclusive evidence of title against Appellants and in favor of Appellees and in dismissing said petition or bill of complaint of Appellants and entering judgment for costs against Appellants. In so holding and entering judgment, as aforesaid, said Court deprived Appellants of their property without due process of law and denied to Appellants the equal protection of the laws contrary to the Fourteenth Amendment to the Constitution of the United States.

5. The Supreme Court of the State of Illinois erred in holding that the certificate of title issued by the Registrar of Titles of Cook County, Illinois, to Jerome C. Napletone, based on a forged deed purporting to have been made by [fols. 75 & 76] Appellants to said Napletone, as grantee, and the certificate of title issued by said Registrar to Charles Wilborn and Carrie S. Wilborn, Appellees, were conclusive evidence of title against Appellants and in favor of Appellees and in affirming the judgment and decree of the Circuit Court of Cook County, Illinois, and entering judgment for costs against Appellants. In so holding and entering judgment, as aforesaid, said Court deprived Appellants of their property without due process of law and denied to Appellants the equal protection of the laws contrary to the Fourteenth Amendment to the Constitution of the United States.

Prayer for Reversal

For which errors the Appellants pray that the said judgment and order of affirmance of the Supreme Court of Illinois, rendered June 19, 1929, in the above entitled cause, and also the judgment of said Circuit Court of Cook County, Illinois, rendered October 22, 1926, in said cause,

be reversed and that said cause be remanded for further proceedings in accord with the rights of Appellants.

Matthias Concannon, Counsel for Appellants, 69 West Washington Street, Chicago, Illinois.

Read on application for appeal to the Supreme Court of the United States August 13," 1929.

William M. Farmer, Chief Justice of the Supreme Court of Illinois.

[File endorsement omitted.]

[fols. 77-79] Bond on appeal for $1,000, approved and filed August 13, 1929, omitted in printing.

[fols. 80 & 81] Citation, in usual form, showing service on Charles F. Glaeser and Joseph G. Sheldon, filed August 13, 1929, omitted in printing.

[fol. 82] IN SUPREME COURT OF ILLINOIS

[Title omitted]

PRÆCIPE FOR RECORD—Filed Aug. 13, 1929

To Charles W. Vail, Clerk of the Supreme Court of Illinois:

You will please prepare a true, full and complete transcript of the record and proceedings in the case of Edward Eliason and Elin Eliason, Appellants, vs. Charles Wilborn, Carrie S. Wilborn and Noel State Bank, a corporation, Appellees, No. 18143, and also of the opinion of the Court rendered therein, as the same appears of record in your office.

Matthias Concannon, Counsel for Appellants.

Received a copy of the foregoing Prænipe for Record this 13th day of August, 1929.

Charles F. Glaeser, Joseph G. Sheldon, Counsel for Appellees.

[File endorsement omitted.]

[fol. 83] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 84] Clerk's return omitted in printing.

[fol. 85] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS INTENDED TO BE RELIED UPON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed Aug. 28, 1929

The following are the points on which the Appellants intend to rely to obtain a reversal of the judgment appealed from, namely:

1. The statute of the State of Illinois, entitled, "An Act concerning land titles," approved and in force May 1, 1897, as amended, (Laws 1897, p. 141; Cahill's Ill. Rev. Stats. 1927, Chap. 30, pars. 88, 90 and 94,) as construed and applied to appellants by the Supreme Court of that State, is invalid, because repugnant to the Constitution of the United States, and because it deprives appellants of their property without due process of law and denies to appellants the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States.

2. Appellants, by voluntarily purchasing lands registered under said statute, are not precluded from complaining that the provisions of said statute, as construed and ap-[fol. 86] plied by the Supreme Court of Illinois, operate to deprive them of their property without due process of law and to deny to them the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States, and the decision of the Supreme Court of Illinois holding that appellants are so precluded, deprives appellants of their property without due process of law and denies to them the equal protection of the laws, in violation of said Fourteenth Amendment.

3. The Circuit Court of Cook County, Illinois, and the Supreme Court of that State, in holding that the certificate of title issued by the Registrar of Titles of Cook County, Illinois, to Jerome C. Napletone, based on a forged deed purporting to have been made by appellants to said Napletone, as grantee, and the certificate of title issued by said Registrar to Charles Wilborn and Carrie S. Wilborn, appellees, were conclusive evidence of title against appellants and in favor of appellees, deprived appellants of their property without due process of law, and denied to appellants the equal protection of the laws contrary to the Fourteenth Amendment to the Constitution of the United States.

Appellants respectfully represent that the whole of the record as filed, except the parts thereof herein directed to be omitted in printing, is necessary for the consideration of the case, and the Clerk will please print the whole record, except the following designated parts thereof, which shall [fol. 87] be omitted in printing, viz.:

	Record page
1. Notice of motion to set Demurrer for argument	21
2. Motion to Amend	22
3. Appeal Bond	27–30
4. Notice of Præcipe for Record	31
5. Præcipe for Record	32–33
6. First Opinion, Partlow, Commissioner	41–48

Matthias Concannon, Counsel for Appellants, 69 W. Washington St., Chicago, Illinois.

Received a copy of the above and foregoing statement this 26th day of August, 1929.

Counsel for appellees do not intend to designate any additional parts of the record to be printed, and consent that the record may be printed as directed with the above designated parts omitted.

Charles F. Glaeser, Joseph G. Sheldon, Counsel for Appellees, 19 S. LaSalle St., Chicago, Illinois.

[fol. 88] [File endorsement omitted.]